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C O N F I D E N T I A L KUWAIT 000510

SIPDIS

STATE FOR EB/ESC/TFS JSALOOM, GGLASS AND NROTHSTEIN  
STATE FOR S/CT SFOX, IO/PHO GSOUTHERN AND APEREZ, L/EB SHILL  
TREASURY FOR OFAC RNEWCOMB  
TUNIS FOR NATALIE BROWN

E.O. 12958: DECL: 02/16/2014

TAGS: [EFIN](#) [ETTC](#) [ECON](#) [PREL](#) [KU](#) [IZ](#)

SUBJECT: (C) IRAQI ASSETS: KUWAIT'S \$85 MILLION TRANSFER  
SNARED IN NEW YORK LEGAL BATTLE

REF: A. 03 KUWAIT 5537

[1](#)B. KUWAIT 480

[1](#)C. TWILLIAMS (NEA/ARP)-SCARRIG (KUWAIT) EMAIL  
(02/03/04)

Classified By: Charge d'Affaires Frank C. Urbancic, Reason 1.4(b)

[1](#)1. (U) This is an action request: please see paragraph 6.

[1](#)2. (C) Post reported in Ref A that the Government of Kuwait decided in December 2003 to transfer \$85 million held in the Commercial Bank of Kuwait's Nassau branch to the Development Fund for Iraq (DFI), pursuant to UN Security Council Resolution (UNSCR) 1483. During a January 19 meeting with Office of Foreign Assets Control (OFAC) Director Richard Newcomb, Governor Shaykh Salem Al-Sabah of the Central Bank of Kuwait confirmed that the Central Bank would instruct the Commercial Bank to transfer the funds "within a week," despite certain unspecified "legal questions" about ownership and transfer of the funds (Ref B). On February 16, EconOff spoke with Talal Alsayegh, the acting head of Central Bank's Anti-Money Laundering Unit, to determine if the \$85 million had been transferred and if not, the reasons for the delay.

[1](#)3. (C) According to Alsayegh, the Commercial Bank of Kuwait is balking at transferring the funds -- despite the Central Bank of Kuwait's order to do so -- because a New York federal court has imposed a freeze on those funds. As reported in Ref C, Alahli Bank (another Kuwaiti institution) received a default judgement in 1996 against Rafidain Bank and the Central Bank of Iraq. Alahli Bank is claiming that the default judgement should be applied to the \$85 million in Iraqi assets held in the Commercial Bank of Kuwait's Nassau branch. However, because the attachment procedures began after May 22, 2003, State's Office of the Legal Adviser (L) believes that the funds are not subject to a prior lien (under the definition provided in UNSCR 1483) and consequently should be transferred immediately to the DFI.

[1](#)4. (C) Alsayegh confirms that the Central Bank of Kuwait is in agreement with L's position. The Commercial Bank, however, argues that it cannot transfer the funds until the US federal court rules on an appeal the Commercial Bank has filed against the Alahli Bank judgement. (NOTE. In a January 29 email to CPA's William Moxley (Ref C), the Iraqi Ministry of Justice's attorney in the US, Bingham McCutchen LLP's Edward Powers, made the same point, noting that the Commercial Bank "can't move the funds until the court here rules, assuming it does lift the restraint." END NOTE.)

[1](#)5. (C) Alsayegh said that the Central Bank of Kuwait briefed OFAC on the situation, and requested OFAC support for the Central Bank's position. Again according to Alsayegh, OFAC's lawyers responded that OFAC does not have jurisdiction in this case and therefore cannot intervene.

[1](#)6. (C) ACTION REQUEST. Post requests guidance on how we should advise the GOK to proceed on this issue. The Central Bank requests USG support in its efforts to force the Commercial Bank to contravene what the Commercial Bank perceives as a valid US federal court order, and make the transfer.

[1](#)7. (U) Baghdad minimize considered.  
URBANCIC